

HOUSE BILL REPORT

ESHB 2479

As Passed Legislature

Title: An act relating to voting equipment.

Brief Description: Modifying provisions on voting equipment.

Sponsors: By House Committee on State Government Operations & Accountability (originally sponsored by Representatives Haigh, Nixon, Green, Hunt, Haler, Morrell and Upthegrove; by request of Secretary of State).

Brief History:

Committee Activity:

State Government Operations & Accountability: 1/13/06, 1/27/06 [DPS].

Floor Activity:

Passed House: 2/14/06, 96-0.

Passed Senate: 3/2/06, 46-0.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Removes the requirement that vote tallying equipment be used in another state before it may be used in Washington, and requires that it be tested and certified by the U.S. Election Assistance Commission.
- Requires in-person disability access voting be available 20 days before an election and end on the day of the election.
- Requires county auditors to establish an advisory committee to assist in developing a plan to improve election accessibility.
- Authorizes the use of automated signature verification systems approved by the Secretary of State (Secretary), and directs the Secretary to adopt rules and standards for approval and implementation for these systems.

HOUSE COMMITTEE ON STATE GOVERNMENT OPERATIONS & ACCOUNTABILITY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Haigh, Chair; Green, Vice Chair; Nixon, Ranking Minority Member; Hunt, McDermott and Miloscia.

Minority Report: Do not pass. Signed by 3 members: Representatives Clements, Assistant Ranking Minority Member; Schindler and Sump.

Staff: Marsha Reilly (786-7135).

Background:

Washington Voting System Certification Requirements

The Secretary of State (Secretary) is responsible for the inspection, evaluation, and testing of voting systems in the state. Voting systems, voting devices, and vote tallying systems must be certified and approved by the Secretary before they can be used or sold in the state. To be used in Washington, a voting device also must be tested, certified, and used in at least one other state or election jurisdiction, and must meet the federal standards.

National Voting System Standards

The Help America Vote Act (HAVA) required the U.S. Election Assistance Commission (EAC) to issue Voluntary Voting System Guidelines that would update and augment the 2002 Voting System Standards (Standards) to reflect advances in voting technology, to incorporate requirements of the HAVA, and to address the proliferation of electronic voting systems. The proposed guidelines were released for comment in June 2005, and the final guidelines were adopted in December 2005. The HAVA also required the EAC to develop a national program for accrediting voting system testing laboratories and to oversee the certification of voting systems. This has been done in the past by the National Association of State Election Directors.

The Standards for vote accuracy require that all systems must:

- record the election contests, candidates, and issues exactly as defined by election officials;
- record the appropriate options for casting and recording votes;
- record each vote precisely as cast and be able to produce an accurate report of all votes cast;
- include control logic and data processing methods incorporating parity and check-sums (or equivalent error detection and correction methods) to demonstrate that the system has been designed for accuracy; and
- provide software that monitors the overall quality of data read-write and transfer quality status, checking the number and types of errors that occur in any of the relevant operations on data and how they were corrected.

In addition, Direct Recording Electronic voting systems must be able to record and retain redundant copies of the original ballot image.

Voting equipment vendors must submit hardware, firmware, and software to an Independent Test Authority (ITA) for evaluation against the Standards.

Signature Verification

Before absentee ballots are processed, the signature on the security envelope is checked against the signature of that voter contained in the registration files. In 2005, the Legislature required the Secretary to establish guidelines, in consultation with state and local law enforcement or certified document examiners, for signature verification processes. All election personnel assigned to verify signatures must receive training on the guidelines.

Disability Access Voting

The HAVA requires that disability access voting must be offered using disability access voting devices that meet access requirements. Specifically, the HAVA requires that a voting system "be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters."

County auditors are responsible for the designation of disability access voting locations in the county. At the discretion of the county auditor, the period for disability access voting may begin 20 days before an election and end one day before the election; however, he or she may set the end of the disability access voting period to satisfy requirements for printing and distributing poll books to the polls in order to prevent multiple voting. The auditor is required to maintain a system to prevent multiple voting.

Summary of Engrossed Substitute Bill:

The requirement that a voting device be used in another state before it may be certified in Washington is removed. Instead, it is required that the device be tested and certified by an ITA designated by the EAC. The requirement that voting equipment allow the voter to vote for candidates of multiple political parties is removed.

Dates for disability access voting are changed from permissive to mandatory. The ending date for disability access voting is changed from one day before the election to the day of the election. County auditors are required to provide voting systems certified by the Secretary for disability access.

County auditors are required to establish an advisory committee that includes persons with disabilities and persons with expertise in providing accommodations for persons with disabilities. The committee is to assist election officials in developing a plan to improve the accessibility of elections for voters with disabilities.

County auditors may use automated signature verification systems to verify signatures on absentee ballot security envelopes, as long as the system has been approved by the Secretary. The Secretary is directed to adopt rules and standards for approval and implementation of hardware and software for these automated systems.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) The Secretary of State (Secretary) supports the bill. The first change that is made relates to the availability of disability access equipment. Most voters in the state have two and one-half weeks to vote, and this time is extended to voters who use disability access voting equipment. Right now, the law requires that the equipment be available on election day and that is being changed so that it will be available for the same period allowed for absentee voters. Other changes are made regarding approval of voting devices. The current law permits a voter to vote for all of the candidates of one party or for candidates of one or more other parties. That language, as you know, is no longer valid and needs to be removed to be consistent with the Montana-style primary. There is currently a requirement that voting equipment must be used in another state before it is used here. That worked very well when voting equipment did not change much. But voting equipment has been changing rapidly. We are up against a time crunch to comply with requirements put in place by federal law. Equipment used in another state does not mean that it has been through any testing standards in those states. It is more appropriate to rely on the testing standards put in place by the federal government, including testing by independent testing authorities. It is also tested at the state level, and again at the county level before it is put into use. The League of Women Voters has written a letter of support indicating that the state should be able to certify and test equipment not already used in another state. The testing done in California and Florida was done by hackers and the access that was provided to them was outside of normal procedures. Testing here does take into account the testing done in other states. Staff in the Secretary's office went to California to see the testing there. Rather than rely on the unknown testing standards in other states, it is better to rely on the known testing standards at the federal level. State testing has improved. It is an open process and involves a public hearing. Security procedures for disability access machines are the same as those used for other machines on election day. Steps are taken to make sure that the memory disk is not removed. County auditors have discretion in terms of hours and location of the equipment. At a minimum, they would have to have the equipment in their office for that time period. The equipment has to be available for 20 days to comply with equal access laws. The county auditors are in support of the bill. The 20 day window would require that the machines be available at the auditor's office. Later, the auditor's can expand the locations and how many hours the machines are available. Auditors do have some discretion. The machines can accommodate various types of disabilities. There is more work to be done in reaching other groups through technological changes. This is one reason why it is important to remove the requirement that voting equipment be used in other states.

(With concerns) The security of the equipment is of concern and some of the testing that has been done recently. The requirement that the equipment be used in at least one other state should be retained. The vendors have had four years to develop equipment compliant with HAVA. The laws of the state should not be changed to protect equipment vendors. The people's votes must be counted accurately. The requirement that the equipment be tested by

an ITA is good, but that should not be the only test. There is very little or no security testing. Simply asking an ITA to test is good but not adequate. The additional level of security needs to be maintained.

Testimony Against: Voters Unite opposes the bill. The bill analysis mentions voting system standards, but those standards are not in place and won't be in place for two years. The early voting situation for the disabled is supported to a point. It doesn't say that it is only for the disabled. Early voting is a real trouble area for a lot of people because secrecy of the vote is lost. The ITA system was witnessed in Olympia last fall. Tests were done with a lot of flailing around. If not for the law that requires the equipment to be tested in another state, that system would have been certified in this state. In California, systems failed there that are used here. Many failed with blue screens, crashes, and other problems. Later another test was run and all the problems had been taken care of. The hacker in Florida discovered banned software on the memory cards in those machines and Florida has sent the cards back to the ITAs for questions. The hurdle requiring systems be used in other states needs to be in place.

Persons Testifying: (In support) Katie Blinn, Shane Hamlin, and Pamela Floyd, Office of the Secretary of State.

(With concerns) James Zukowski.

(Opposed) John Gideon, Voters Unite.

Persons Signed In To Testify But Not Testifying: None.